



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/705,273	11/10/2003	Brian J. Brown	S63.2N-6769-US03	4909
490 7590 11/03/2009 VIDAS, ARRETT & STEINKRAUS, P.A. SUITE 400, 6640 SHADY OAK ROAD EDEN PRAIRIE, MN 55344				
EXAMINER				
BUL VY Q				
ART UNIT		PAPER NUMBER		
3773				
MAIL DATE		DELIVERY MODE		
11/03/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/705,273

Applicant(s)

BROWN ET AL.

Examiner

Vy Q. Bui

Art Unit

3773

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 June 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 38-65 is/are pending in the application.
- 4a) Of the above claim(s) 40, 41 and 44 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 38, 39, 42, 43, 45, 46 and 57-70 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

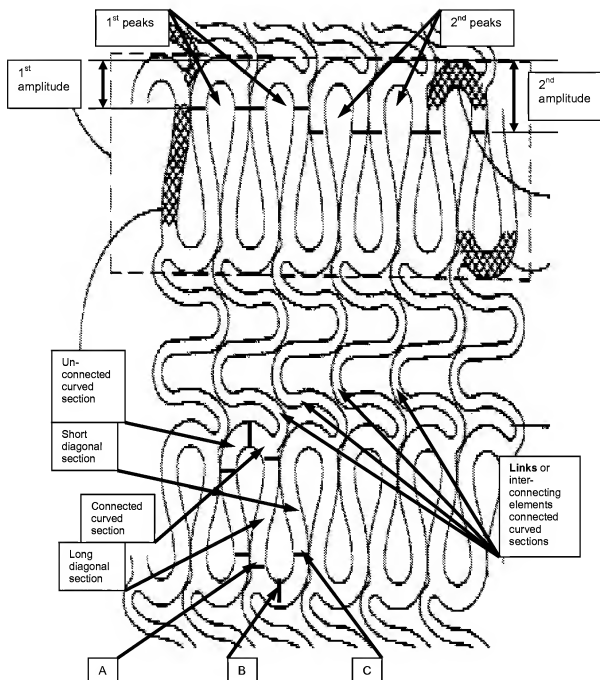
Claim Rejections - 35 USC § 102

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 38, 42-43, 45, 58-60 and 65 are rejected under 35 U.S.C. 102(e) as being anticipated by Fischell et al-6,190,403.

As to claims 38, 42-43, 45, 58-60 and 65, Fischell-'403 discloses a stent made of a stainless steel. Notice that the limitation "short diagonal section", "long diagonal section", "unconnected curved section", "connected curved section", "peaks", and so on in the claims are broadly interpreted. Therefore, partial of Fischell-'403's Fig. 9 reproduced below shows each circumferential set of strut members including links 44 connecting "connected curved sections", short diagonal sections, long diagonal section, unconnected curved sections and connected curved sections to define connected strut members and unconnected strut members substantially as recited in the claims.

Notice that there is nothing in the claims to exclude the interpretation of Fischell-'403's Fig. 9 as presented below.



Claim Rejections - 35 USC § 103

1. Claims 39, 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischell et al-6,190,403 in view of Kanesaka et al-5,810,872.

As to claims 39 and 63, Fischell-'403 discloses substantially all limitations of the claimed invention, except for a straight link. However, Kanesaka-872 discloses a stent as shown in Fig. 1 having wavy band connecting by substantially straight elements. It would be obvious to one of ordinary skill in the art to provide straight links to a Fischell-'403 stent as straight links are well known links in the stent art.

2. Claim 46 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fischell et al-6,190,403 in view of in view of Anderson et al.-5,800,526.

As to claim 46, Fischell-'403 discloses substantially all limitations of the claimed invention, except for the stent made of a tantalum. However, Anderson-'526 (col. 4, lines 37-40; col. 9, lines 52-61) discloses a stent of tantalum for easy detection under as fluoroscopy process. It would be obvious to one of ordinary skill in the art to make Fischell-'403 from a tantalum material for easy detection under a fluoroscopy process.

3. Claims 57, 61-62, 64 and 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischell et al-6,190,403.

As to claims 57, 61-62 and 64, Fischell-'403 discloses substantially all limitations of the claimed invention, except for some minor modifications as recited in the claims. There is no evident that these modifications will significantly improve the performance of Fischell-'403. Therefore, the claims are not considered as patentable over Fischell-'403.

Further, as to claim 57, it is well known to control the flexibility of a stent portion by reducing the number of connecting links between two adjacent circumferential sets of strut

members. For example, Roubin et al.-5,827,321 (F 4A, C 6, L 57-66; F 9) teaches omitting connecting members 48 or 49 to increase flexibility of the stent. It would be obvious to one of ordinary skill in the art to reduce the number of connecting members in Fischell-'403 stent to increase flexibility of the stent as taught by Roubin-'321.

As to claims 61, notice that Fischell-'403 can be manually locally stretched at different portions of one set of circumferential strut members to have different wavelengths from the unstretched portions. It would have been obvious to one of ordinary skill in the art to recognize that Fischell-'403 stent can be manually stretched to have the claimed invention.

As to claim 62, the term "peak" is not clearly defined, and one interpretation as indicated in above reproduced F 9 of Fischell-'403 is applicable. It would have been obvious to one of ordinary skill in the art to choose the peaks in Fischell-'403 having 1st amplitude as recited in the claim because this would be reasonable for a person of ordinary skill in the art to look at Fischell-'403 stent.

As to claim 64, 1st length and 2nd length are not clearly defined and a 1st length of 1st interconnecting elements and a 2nd length of 2nd length interconnecting elements can be chosen to meet the limitation of the claim.

As to claim 66, as indicated in the above reproduced Fischell-'404's F. 9, 2nd amplitude is greater than 1st amplitude. It would be reasonable for one of ordinary skill in the art to conclude that 2nd peaks extend further toward the 1st end than 1st peaks because 2nd peaks are longer than 1st peaks.

Claim Rejections - 35 USC § 102

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 67-70 are rejected under 35 U.S.C. 102(e) as being anticipated by Al-Saadon-5,755,776.

As to claims 67-70, Al-Saadon-'776 (F 7) discloses substantially all the limitations of the claimed invention, such as long struts, short struts, interconnecting elements. Please, notice that the claims do not have any limitation to clearly define a strut (where does it start and end?) or an interconnecting element (where does it start and end?).

Notice that there is nothing in the claims to exclude the interpretation of Al-Saadon-'776 (F 7) as presented below. The applicant is expected to amend the claims to distinguish the present claimed invention over Fischell-'403's.

As such, the claims must be interpreted in a broad and reasonable manner as indicated below:

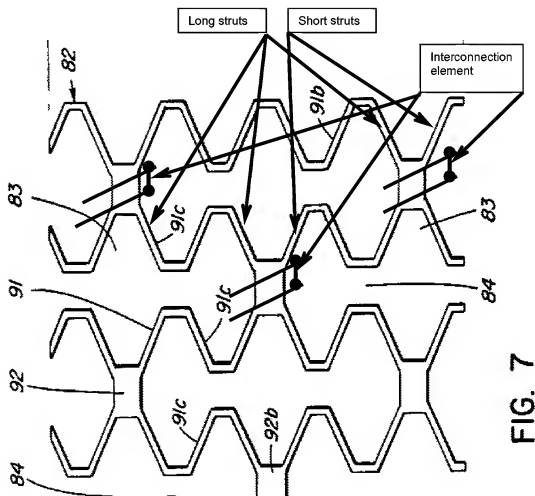


FIG. 7

Response to Arguments

Applicant's arguments filed 10/6/2009 have been fully considered but they are not persuasive because:

1. limitation "each two adjacent strut members connected by a single curved section" only requires that there is at least one single curved section AB or BC in the connecting member AC (please, see reproduced F 9 of Fischell-'403 above), which has two common points (A and C) to each one of two strut members. Notice that each curved section AB and BC is indeed a single curved section because these section only have a single body (not branched, or not split into two branches, for example).
2. there is nothing in the claim to define or indicate where are the beginning point and end point of "a peak". Therefore, the interpretation as indicated in the above rejection is proper.

Conclusion

In response to the amendment and new claims filed 4/30/2009 and the arguments filed on 10/6/2009, in order to better pointing out the un-patentability of the claimed invention, this "Office Action" is a replacement of the last "Final Office Action".

For an acceleration of the prosecution, this "Office Action" is also made "FINAL".

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vy Q. Bui whose telephone number is 571-272-4692. The examiner can normally be reached on Monday-Tuesday and Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on 571-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Vy Q. Bui/
Primary Examiner, Art Unit 3773